

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1051 – SB 1265

April 15, 2011

**SUMMARY OF AMENDMENT (006101):** Deletes the original bill. Prohibits pharmacies from selling more than three- and six-tenths grams per day or more than nine grams per thirty-day period of non-exempt methamphetamine (ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomer) to the same person. These limits apply to the total amount of base ephedrine or pseudoephedrine contained in the products, and not the overall weight of the products. Such prohibition does not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed healthcare practitioner authorized to prescribe in Tennessee. Requires the pharmacist or pharmacy intern to counsel a person seeking to purchase an over-the-counter product containing pseudoephedrine or ephedrine as to the reason for needing the product and authorizes the pharmacist or pharmacy intern to decline the sale if he or she believes the sale is not for a legitimate medical purpose.

Deletes the current option for a pharmacy to maintain a written register in lieu of an electronic record. Requires, by January 1, 2012, each pharmacy in Tennessee to have in place and operational all equipment necessary to access and use the National Precursor Log Exchange (NPLeX) administered by the National Association of Drug Diversion Investigators (NADDI). Requires the NPLeX system to be free to the pharmacies and to the State of Tennessee. Effective January 1, 2012, prior to completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine not otherwise excluded, a pharmacy shall electronically submit the required information to the NPLeX system and prohibits the pharmacy from completing the sale if NPLeX generates a stop sale alert indicating that the completion of the sale would result in violation of the established quantity limits, unless reasonable fear of imminent bodily harm is present. Authorizes only law enforcement officials, health care professionals, and pharmacists to use the data entered into NPLeX, and only for controlling the sale of methamphetamine precursors. If for any reason the NPLeX system no longer functions, is no longer in existence, is not longer offered to the State without cost, or is otherwise no longer available, each pharmacy shall switch to and commence using the Tennessee Methamphetamine Intelligence System (TMIS) as soon as the necessary equipment is made available at no charge to the pharmacy.

Requires TMIS to be available for access and use free of charge to the pharmacies. If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the tracking system and is unable to comply with the requirements, the pharmacy must maintain a written log until such time the pharmacy is able to comply with the electronic sales tracking requirement. Authorizes a pharmacy to seek an exemption from submitting transactions to the electronic sales tracking system in writing to the Board of Pharmacy stating the reasons therefore. Authorizes the Board to grant an exception for good cause but in no event shall the exemption exceed 180 days. Requires a pharmacy that receives an exemption to maintain a hard copy logbook with the required information. All data

that is collected from Tennessee pharmacies and stored in the NPLeX system will be exported, downloaded, electronically sent, and/or delivered to the (TMIS) at least every 24 hours. Requires the import of data to be in a version approved by TMIS and requires such import to be executed without a charge to TMIS or to any Tennessee state agency. All data transmitted to TMIS becomes the property of the State of Tennessee.

Any violation of the immediate methamphetamine precursor prohibitions is a Class A misdemeanor punishable by fine only. Prohibits any person, who violates the provisions of this bill as amended and is placed on the methamphetamine registry, from purchasing a non-exempt product for the entire seven years the person is required to be on the registry. Requires the Tennessee Bureau of Investigation (TBI) to devise a method to electronically notify, at least every seven days, the NADDI, who administer NPLeX, of any person placed on the methamphetamine registry and to notify the NADDI when a person is removed from the registry and is permitted to purchase non-exempt products. Creates a Class A misdemeanor for any person who knowingly sells or delivers a non-exempt substance to a person on the methamphetamine registry and for any person who purchases or attempts to purchase a non-exempt substance while such person is on the methamphetamine registry.

Creates a Class A misdemeanor offense, punishable by fine only of \$1,000, for any person who sells, attempts to sell, or possesses a non-exempt product with the intent to sell it to another for a non-medical use or unlawful purpose; purchases or attempts to purchase the product for another, or possesses the product with the intent to deliver it to another for a non-medical use or unlawful purpose; or purchases the product at different times or locations or uses a false identification to purchase the product for the purpose of circumventing the quantity limits on the amount that can be purchased during a one-day or 30-day period. All proceeds from fines imposed shall be used by the jurisdiction making the arrest for methamphetamine clean-up activities in that jurisdiction. Imposes a fine of \$2,000 for a second or subsequent conviction. Requires any such person to be placed on the methamphetamine registry and prohibits any such person from purchasing a non-exempt product for the entire seven years the person is required to be on the registry.

Requires the Office of the Comptroller of the Treasury to conduct a study of methamphetamine use in Tennessee and to report its findings to the House of Representatives Health and Human Resources Committee and the Senate General Welfare, Health and Human Resources Committee by January 1, 2013. The study shall include a review of existing literature; a review of available information on programs in other states, particularly those states that require a prescription for methamphetamine precursor purchase; and analysis of data and information from the Tennessee Methamphetamine Task Force, the TBI, and other state or local agencies.

Effective July 1, 2011, decreases, from 20 to 15 grams, the amount of an immediate methamphetamine precursor to establish prima facie evidence of intent to commit the Class D felony offense of promotion of methamphetamine manufacture. Expands the offense of aggravated child abuse, neglect, or endangerment to include knowingly exposing a child to the manufacture of methamphetamine.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Expenditures - \$91,200 /Incarceration\***

Assumptions applied to amendment:

- By January 1, 2012, each pharmacy in the state will have in place and operational all equipment necessary to access and use the NPLeX system. The system will be available to pharmacies without a charge for accessing the system.
- According to the Department of Health, rule-making and any resulting disciplinary action against pharmacies that violate the provisions of this section can be accomplished during regularly scheduled Board of Pharmacy meetings and will not result in a significant increase in state expenditures.
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. The Board had a balance of \$74,641.74 in FY09-10 and a deficit of \$59,776.49 in FY08-09. As of June 30, 2010, the Board's cumulative balance was \$276,649.24.
- According to the TBI, any costs incurred to devise a method in cooperation with the NADDI to electronically notify NADDI at least every seven days of any person placed on the methamphetamine registry is estimated to be not significant and can be accommodated within existing resources without an increased appropriation or reduced reversion.
- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.
- According to the Comptroller of the Treasury, any additional costs incurred to perform the required study can be accommodated within existing resources.
- According to the Department of Correction (DOC), there has been an average of 35 admissions for the Class D felony of promotion of methamphetamine manufacture in each of the past 10 years. DOC assumes that lowering the immediate methamphetamine precursor possession amount from 20 to 15 grams will result in one additional admission every two years.
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one additional Class D felony admission every two years.

- According to the Department, the average operating cost per offender per day for calendar year 2011 is \$60.62. The average post-conviction time served for a Class D felony is 1.97 years (719.54 days) at a cost of \$43,618.51 (\$60.62 x 719.54 days). The annualized time served per Class D conviction is 359.77 days (0.50 annual number of convictions x 719.54 days served). The annualized cost per conviction is \$21,809.26 (\$60.62 x 359.77 days).
- It is currently a Class B felony to commit aggravated child abuse, neglect, or endangerment. The offense is punishable as a Class A felony if the abused, neglected, or endangered child is eight years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated, or suffers from a physical disability.
- According to the Department of Children's Services, there has been an average of 386 cases in each of the past two years where a child less than 13 years of age was present during the manufacture of methamphetamine.
- According to the Department of Correction (DOC), there have been zero convictions for the initiation of a process intended to result in the manufacture of methamphetamine. The Department assumes there will be one Class A felony and one Class B felony every five years due to the increasing number of children being exposed to the manufacture of methamphetamine. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year is based on one additional Class A offender and one additional Class B offender every five years.
- The average post-conviction time served for a Class B felony is 5.66 years (2,067.32 days) at a cost of \$125,320.94 (\$60.62 x 2,067.32 days). The annualized time served per Class B conviction is 413.46 days (0.20 annual number of convictions x 2,067.32 days served). The annualized cost per conviction is \$25,063.95 (\$60.62 x 413.46 days).
- The average post-conviction time served for a Class A felony is 16.68 years (6,092.37 days) at a cost of \$369,319.47 (\$60.62 x 6,092.37 days). The cost in the tenth year is \$221,414.55 (\$60.62 x 3,652.50 days). The annualized time served per Class A conviction is 730.50 days (0.20 annual number of convictions x 6,092.37 days served). The annualized cost per conviction is \$44,282.91 (\$60.62 x 730.50 days).
- The total additional operating cost is \$91,156.12 (\$21,809.26 + \$25,063.95 + \$44,282.91).
- According to the District Attorneys General Conference, the additional number of cases generated by the proposed bill will not significantly impact their caseloads. Any additional cost can be accommodated within existing resources without an increased appropriation or reduced reversion.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink, appearing to read "James W. White". The signature is stylized with a large initial "J" and a prominent "W".

James W. White, Executive Director

/lsc